

CONFERENCES AND EVENTS

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China's Looted Cultural Property: Historical Injustice and Current Dilemma A Panel Session at the 118th American Society of International Law Annual Meeting Washington DC, 4 April 2024

In a significant move, on 27 August 2023, the *Global Times*, a leading Chinese newspaper, issued a formal demand to the British Museum to repatriate all cultural artefacts looted from China and currently housed within its collections. While disputes over historically plundered cultural property are not new, China's extensive losses have often remained overshadowed on the global stage. The period between the Opium War (1840) and the establishment of the People's Republic of China (1949) was marked by devastating cultural plunder. Estimates suggest that over 10 million artefacts were stolen during this tumultuous era. The session, organized by the Interested

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Group-Cultural Heritage and the Arts of the American Society of International Law (ASIL) during the 118th Annual Meeting of this organization, convened four distinguished Chinese scholars to explore the complex legal and ethical dimensions of China's looted cultural heritage.

Huo Zhengxin, the first speaker, offered a poignant overview of China's tragic history of cultural heritage theft during the period from 1840 to 1949. He outlined the various methods employed by looters; the government's determined efforts to recover lost treasures; and the significant obstacles encountered in these endeavours. Huo delved into the legal arguments supporting China's claim for the return of relics looted by Japan during the War of Resistance against Japanese Aggression. While international and domestic laws present formidable challenges to China's restitution efforts, Huo emphasized that Western powers are not exempt from their obligation to return looted cultural property. He asserted that the demand for the return of looted artefacts constitutes an inalienable right of the Chinese people, rooted in the injustices of foreign invasions and occupation. Huo also stressed Japan's ethical and legal duty to return looted artefacts, as enshrined in international law.

The next speaker, Zhang Yue, focused on the notorious looting of the Old Summer Palace by British and French forces at the conclusion of the Second Opium War in 1860. Widely regarded as a national humiliation, this event epitomizes the extensive cultural plunder that occurred during the period from 1840 to 1949. Zhang examined China's right to reclaim these looted artefacts by posing three key questions:

- (1) Did international law at the time prohibit such art plunder? This inquiry necessitates an analysis of the laws and customs of war, commonly referred to today as international humanitarian law. While many contemporary scholars assert that the 19th-century laws and customs of war did not prohibit the plunder of art during wartime, Zhang argued that this perspective was flawed. Those scholars erroneously applied modern standards – state practice and *opinio juris* – to determine the existence of customary international law – a test that did not fully materialize until the 20th century. According to the intertemporal law approach, this issue should be reassessed using the 19th-century criteria for evaluating customary international law. By applying the appropriate historical context, a more accurate understanding of the legal norms governing wartime art plunder during that era can be achieved.
- (2) If such a prohibition existed, was it applicable to the Sino-British armed conflicts? Consideration must be given to the prevailing standards of civilized nations during the Second Opium War.
- (3) Has the passage of over a century-and-a-half diminished China's right to restitution? Zhang explored the potential impact of the significant time lapse on the validity of China's claims.

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Huang Jie (Jeanne), the third speaker in the session, presented her essay, "Chasing Provenance: China and its Claims on Underwater Cultural Heritage". Focusing on the South China Sea and Maritime Silk Road, Huang delved into the often-overlooked realm of underwater cultural heritage (UCH). Despite receiving less attention than war- or colonization-related art plunder, the substantial number of underwater discoveries underscores the importance of this topic. Huang examined UCH from four perspectives: its legal scope under Chinese law; its location and characteristics; China's responses; and the validity of China's claims. She also discussed China's salvage of the Nanhai Yi Hao Vessel, which showcased its success in preserving UCH. Despite these efforts, challenges persist, particularly regarding ownership claims in foreign waters, China's right to verify UCH ownership, and restrictions on foreign involvement in UCH activities. Huang suggested that the collaborative protection of UCH, involving nations with verifiable cultural links to artefacts, could offer a more balanced approach. In light of China's commitments under international agreements, such as the Regional Comprehensive Economic Partnership, the country's restrictions on foreign participation in UCH protection may require reconsideration. Establishing joint protection zones could further in situ preservation and mitigate territorial tension.

Last but not least, Yang Xuemei presented a case study on an innovative approach to digital sharing of Dunhuang cultural relics. These cultural objects, which testify to China's ancient Silk Road prosperity, were tragically looted by foreign expeditions after the discovery of the "Library Cave" in the Mogao Grottoes in 1900. Yang outlined the Dunhuang Academy's collaborative efforts with the British Museum and other international institutions to establish digital databases of the Dunhuang relics. As she revealed, the Dunhuang Academy used four digital repatriation models for acquiring and sharing digital resources of the lost Dunhuang cultural relics held overseas: (i) the Negotiation Model: Diplomatic negotiations and academic and cultural exchanges to facilitate resource sharing through gifts; (ii) the Institutional Authorization Model: Negotiate copyright authorization for digital resources; (iii) the Cooperative Collection Model: Commission digital collections of undigitized artefacts; and (iv) the Crowdsourcing Model: Accept voluntary contributions or the authorized provision of digital resources. The chosen model will depend on the specific situation of the overseas collection and digitization. She highlighted the progress made in these partnerships and emphasized that digital sharing does not undermine China's ongoing pursuit of material restitution. Instead, Yang proposed this case study as a new avenue for dialogue and cooperation with museums holding looted artefacts, aiming to mitigate the tensions surrounding dilemma between return and restitution.